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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,101	11/17/2003	Kent D. Cedola	MS1-400USC1	3266
22801	7590	07/14/2004	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			HALIM, SAHERA	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,101

Applicant(s)

CEDOLA, KENT D.

Examiner

Sahera Halim

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/17/2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to the amendment filed on February 18, 2003.
2. Claims 1-17 are pending.

DOUBLE PATENTING

3. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and In re Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and © may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 -8 of U.S. Patent No. 6,675,215 (hereinafter '215 patent). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Claims 1-17 contain the subject matter claimed in the '215 patent. The patent and the instant application are claiming common subject matter, as follows:

The claims of the instant application are much broader than the '215 patent. Claim 1 of both, the application and the patent claim, a host computer coupled to a client computing device via a serial connection, listening to at least a baud rate for a predefined message sent from the client computing device and listening at a second baud rate for the predefined message in an event that the predefined message is not received at the first baud rate.

Claim 1 of '215 does not claim computer executable instructions to perform the above steps. However, this limitation is old and well known in the art. It would have been obvious for one having ordinary skill in the art at the time of the invention to include executable instructions because the baud rate detection system and baud rate selector of '215 patent would not work without computer executable instruction.

Claim 2 of the instant application is also covered by claim 1 of '215 patent. They both recite listening at the first baud rate for a predetermined period.

Claim 3 of the present application is also cover by claim 1 and 7 of the '215 patent. Both claims have the following limitations: Listening at the second baud rate for the predefined message in an event that characters not forming part of the predefined message are received at the first baud rate.

Reference to claim 4, '215 patent claims the same limitations of claim 4 in its claim 5, which comprises caching the second baud rate in an event that the predefined message is received at the second baud rate.

Regarding claim 5, claim 3 of '215 covers the limitations of claim 5, looking up the first and second baud rates in a table. Claim 3 of '215 claims that the baud rate selector is configured to retrieve the baud rates from the table. Although, one claim is looking up the baud rates and the other is retrieving, their purpose is the same. Besides, without looking up the baud rates, it is not possible to retrieve them.

As to claim 6, it is rejected for the same reasons set forth in claim 1. Moreover, although claim 1 of '215 patent does not have the limitation of a computer system having a processor, an operating system embodied on the computer readable medium and executed on the processor, it would have been obvious for one have ordinary skill in the art to realize that the system disclosed by '215 patent would not work without these limitations.

Reference to independent claims 7 and 9, all the limitation of claims 7 and 9 are found in the claim 1, 7 and 8 of '215 patent, except computer executable instructions and an operating system incorporating the computer program. It would have been obvious for a person having ordinary skill in the art at the time of the invention to include these limitations because the system of '215 would not work without this limitation.

The limitations of claim 8 is covered by claim 5 of '215 patent. Although the wording is different, but both are claiming caching the baud rate at which the predefined message is successfully received.

Regarding claim 10, claims 1 and 8 of '215 patent comprises the limitations of claim 10, which recites listening at a first of multiple baud rates for a predefined message to be sent by a client computing device over a serial connection to a host computer and in an event that characters not included as part of the message are received or the message is not detected within a predetermined time period, listing at a second of the baud rates for the message.

The limitations of claims 11, 12, and 13 are recited in claims 1, 4, and 3 of '215 patent.

Reference to claim 14, again claim 1 of '215 patent comprises the limitations of claim 14. Claim 14, is much broader than claim 1, however, claim 1 teaches all of the limitations of this claim.

Claims 15, and 16 are the same limitations of claim 2 and 4 of '215 patent.

Claim 17 of the present application is thought by claims 1 and 3 of the '215 patent in a different form.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kennedy et al., U.S. Pat. No. 5490209.

6. Reference to claim 1, Kennedy teaches in a computer system having a host computer coupled to a client computing device via a serial connection, an operating system embodied on a computer-readable medium at the host computer, comprising (fig. 1 and col. 1, lines 29 – 42):

computer-executable instructions to listen at a first baud rate for a predefined message sent from the client computing device (abstract and col. 1, (col. 2, lines 26-50) ; and

computer-executable instructions to listen at a second baud rate for the predefined message in an event that the predefined message is not received at the first baud rate (col. 2, line 26 – col. 3, line 12).

7. Regarding claim 2, Kennedy teaches executable instruction to listen at the first baud rate for a predetermined period (col. 5, lines 1-34).

8. As to claim 3, Kennedy discloses computer executable instructions to listen at the second baud rate for the predefined message in an event that error characters not forming part of the predefined message are received at the first baud rate (col. 4, lines 19-67).

9. Reference to claim 4, Kennedy teaches executable instructions to cache the second baud rate in an event that the predefined message is received at the second baud rate (col. 2, lines 13-24).

10. Regarding claim 5, Kennedy teaches executable instructions to look up the first and second baud rates in a table (col. 2, lines 1-16).

11. As to claim 6, Kennedy discloses a processor; and the operating system of claim 1, embodied on the computer medium and executed on the processor (fig. 1 and col. 1, lines 29 – 42, abstract and col. 1, col. 2, lines 26-50 and col. 2, line 26 – col. 3, line 12).

12. Reference to claims 7 and 9, Kennedy teaches inn a computer system having a host computer coupled to a client computing device via a serial connection, a computer program module embodied on a computer-readable medium for execution at the host computer, comprising:

computer-executable instructions to listen at a first baud rate at which a predefined message might be sent from the client computing device over the serial connection col. 2, lines 26-34 and col. 2, lines 36-51); and

computer-executable instructions to switch to listening at a second baud rate if one of the following events occurs: (1) characters not included in the predefined message are received, or (2) a predetermined timeout period expires without successful receipt of the predefined message (col. 4, lines 19-67 and (col. 5, lines 1-34).

13. Regarding claim 8, Kennedy discloses claim 7, further comprising computer-executable instructions to cache one of the first and second baud rates at which the predefined message is successfully received (col. 2, lines 13-24).

14. Reference to claim 10, computer-implemented method, comprising: listening at a first of multiple baud rates for a predefined message to be sent by a client computing

device over a serial connection to a host computer; in an event that characters not included as part of the message are received or the message is not detected within a predetermined time period, listening at a second of the baud rates for the message (col. 2 line 13 –col. 3, line 4).

15. Reference to claim 11, Kennedy discloses a computer-implemented method of claim 18, wherein the listening steps are repeated until a baud rate is found that allows receipt of the message (col. 2 line 13 –col. 3, line 4).

16. As to claim 12, Kennedy teaches a computer-implemented method of claim 19, further comprising storing the baud rate that enables receipt of the message (col. 2 lines 13-51).

17. Reference to claim 13, Kennedy teaches a computer-implemented method of claim 18, further comprising storing the multiple baud rates in a table (col. 2, lines 1-12).

18. As to claim 14, Kennedy teaches a computer-implemented method, comprising: listening to a serial connection at a baud rate for a predefined message from a client computing device; and automatically adjusting the baud rate in an event that the message is not detected (col. 2, lines 26 – 51).

19. As to claim 15, Kennedy discloses a computer-implemented method of claim 22, wherein the adjusting comprises cycling through a set of predetermined baud rates (col. 2, lines 26 – 51, col. 4 line 1-18).

20. Reference to claim 16, Kennedy teaches a computer-implemented method of claim 22, further comprising caching the baud rate at which the message is detected (col. 4, lines 45-59, col. 2, lines 36- 51).

1. Reference to claim 17, in a computer system having a host computer coupled to a client computing device via a serial connection and employing a Unimodem null serial protocol to establish a connection between the host computer and the client computing device, a computer-implemented method, comprising:

(a) storing multiple baud rates at which a predefined message may be sent from the client computing device over the serial connection (col. 4, lines 1-18);

(b) selecting one of the baud rates (col. 4, lines 19- 44);

(c) listening at the selected baud rate for the predefined message (col. 4, lines 19- 44);

(d) in an event that the predefined message is not received, selecting another of the baud rates (col. 4, lines 31-44); and

(e) repeating steps (c) and (d) until a baud rate is found that enables receipt of the predefined message (col. 2, lines 13 – 67).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,074,345 by van Oostrom et al.

U.S. Pat. No. 5,049,875 by DeLuca et al.

U.S. Pat. No. 5,402,473 by Takai et al.

U.S. Pat No. 6,072,827 by Krulce.

U.S Pat. No. 6,581,100 to Durin et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sahera Halim whose telephone number is (703) 305-8054. The examiner can normally be reached on M-F from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sahera Halim
Patent Examiner
AU: 2157

June 29, 2004


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